

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Benjamin, Circuit Court Judge

Appellate Case No. 2014-002098

U.S. Bank, National
Association, as trustee for the
Holders of the Banc of
America Funding Corporation,
2008-FTI

Respondent,

v.

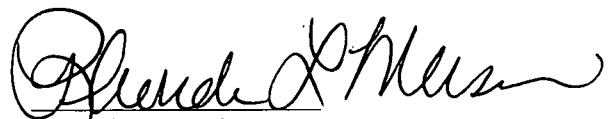
Rhonda Meisner

Appellant.

MOTION FOR REINSTATEMENT PURSUANT TO SCACR RULE 260(a) and
RULE 221(c)

Rhonda Meisner respectfully requests reinstatement of the appeal for all of the reasons
attached to this motion via memorandum.

December 3, 2014



Rhonda L. Meisner
Post Office Box 689
Blythewood, South Carolina 29016
(803) 960-3696
Appellant

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SC Court of Appeals

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The appellant Rhonda Meisner respectfully request her appeal be reinstated pursuant to Rule 260(a) and 221(c) for the following reasons. As an initial matter, the Appellant is unaware of a motion to dismiss the appeal by the Plaintiff's and therefore believes the dismissal to be a sua-sponte dismissal by the Court. Appellant request reinstatement at this time to avoid loss of substantial rights. The Appellant made an oral challenge to the Plaintiff's standing to initiate the suit in the original motions hearing which may not have been readily apparent from the Order appealed. The Order by the Court *with prejudice* indicating the Plaintiff, U.S. Bank did have standing to sue is the Order being appealed in addition to the "real party in interest" challenge.

Argument

As the South Carolina Supreme Court recently noted "In our constitutional system of government with the separation of powers, courts exercise the limited constitutional function of the "judicial power." S.C. Const. art. V. § 1. Accordingly, courts are limited to resolving cases and the powers inherent in that function.[] Because standing is a fundamental pre-requisite for instituting a legal action[]Accordingly, we grant Defendants motions to dismiss. *Carnival Corporation , d/b/a Carnival Cruise Lines; South Carolina State Ports Authority; and the City of Charleston, Defendants v. Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, the Coastal Conservation League, and Preservation Society of Charleston , Plaintiffs.* Opinion No. 27355 Heard November 19, 2013 Filed January 22, 2014.

When a challenge to the Plaintiff's standing to sue occurs via oral motion during another hearing and is settled by a ruling *with prejudice*, this interlocutory order becomes immediately appealable because it determines the parties to the case as well as a partial outcome of the case. By denying the motion to dismiss *with prejudice* based on lack of standing instead of without prejudice; the Court has made a ruling that affects substantial rights of the Defendant and therefore pursuant to S. C. Code Ann. §14-3-330 (2)(c) is immediately appealable. Had the Court issued a denial *without prejudice*, the Defendant would be free to bring the issue of standing up in the later proceedings such as a merits hearing.

It is well settled that to have standing in a mortgage foreclosure case the Plaintiff must be the holder of the note and the mortgage in order to prove standing as part of our fact based pleading scheme. *Carpenter v. Longen* 83 U.S. 271, 16 Wall 271, 21 L.Ed. 313 (1872). The Appellant does not believe the circuit court has subject matter jurisdiction or personal jurisdiction based on lack of standing by the Plaintiff which deprives the Circuit Court of subject matter jurisdiction and personal jurisdiction over the Defendant. The Plaintiff's U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FTI, the Plaintiff in the case on appeal claims to be the holder of the note and the mortgage based on an assignment of the mortgage from Bank of America, NA. As evidenced by the plaintiff's attachment to the complaint; the assignment is faulty, which is therefore null and void as a matter of law. The mortgage was assigned from Bank of America by Nationstar as attorney in fact to U.S. Bank on April 2, 2014; however, the notary that witnessed the

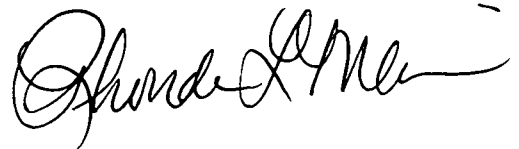
event noted a day later, on April 3, 2014, which is not allowed by South Carolina law. S.C. Code Ann. § 30-7-10 requires recordation for validity of the conveyance and S.C. Code Ann. § 30-7-50 requires the manner in which the assignment shall be executed and probated "[s]hall be in writing and witnessed as mortgages of real property are required to be." It is axiomatic that a witnessed assignment one day *later* than the actual assignment fails as a matter that was witnessed and as a matter of law. Standing must be in place prior to initiating a procedure in the Courts of South Carolina. As further proof that there is a question as to the ownership of the note and mortgage, Bank of America, N.A. the predecessor in title and a default Defendant claims some sort of legal claim based on their late answer to the present lawsuit. Here, the Court has ruled that U.S. Bank has standing which effects not only the case from a discovery point but from a legal standpoint as it became a final order on standing to sue for U.S. Bank and potentially gives Bank of America, NA a pass on their default status which would prejudice the Defendant, Rhonda Meisner.

Additionally, since real party in interest challenges can be waived, the determination that U.S. Bank had standing and is the real party in interest also affects substantial rights of the Defendant, making the ruling *with prejudice* immediately appealable. *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169; 485 S.E. 2d 371, 373 (citing 21 C.J.S. Court § 16 (1990)). The South Carolina Supreme Court has also noted that whether an Order is interlocutory or immediately appealable depends not only on the type of motion but the effect the Order has on the case and the parties. To "involve the merits," an order "must

finally determine some substantial part of some cause of action or defense in the case." *Neeltec Enter., Inc. v Long* 391 S.C. 177,178,705 S.E. 2d 57 58 (S.C. App. 2011). The ruling by the South Carolina Supreme Court in Bardoon Properties that real party in interest designations can be waived if not properly pursued also stands for the proposition the finality of the Order. *Thornton v. South Carolina Elec. & Gas Corp.*, 391 S.C. 297, 305, 705 S.E. 2d 475, 479 (S.C. App. 2011). The Order by the Court without appellate review at this juncture would subject the Appellant to actions by multiple parties e.g: Bank of America, NA and U.S. Bank as both have separate suits for the same note and mortgage currently in the circuit court.

For the above reasons and references to the notice of appeals and the Orders entered by the Circuit Court in the above entitled action, the Plaintiff requests the Court of Appeals reinstate the appeal.

Respectfully Submitted,



Rhonda Meisner
Post Office Box 689
Blythewood, SC 29016
pegasus333@icloud.com

Dec 3, 2014

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Benjamin, Circuit Court Judge

Case No. 2014-CP-40-2063

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Respondent,

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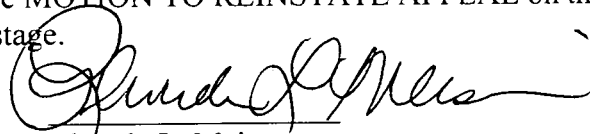
Rhonda Meisner

Appellant.

PROOF OF SERVICE

Rhonda Meisner has served a copy of the MOTION TO REINSTATE APPEAL on the attorneys listed below via U.S. Mail pre-paid postage.

Dec 3, 2014



Rhonda L. Meisner
Post Office Box 689
Blythewood, South Carolina 29016
(803) 960-3696
Appellant

Other Counsel of Record:
Magalie Arcure
Finkel Law Firm, LL
Post Office Box 71727
North Charleston, South Carolina 29415
Attorney for Respondent U.S. Bank
(843)577-5460

Jake S. Barker
Graybill, Lansche and Vinzani, LLC
225 Seven Farms Dr. , Ste 107
Charleston, SC 29492
Attorney for Respondent Bank of America
(843)408-4063